

1
2
3
4
5
6
7
8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
10

11 KAREN E.,

12 Plaintiff,

13 v.

14 NANCY A. BERRYHILL, Acting
15 Commissioner of Social Security
16 Administration,

17 Defendant.
18

Case No. ED CV 17-918-SP

MEMORANDUM OPINION AND
ORDER

19 I.

20 INTRODUCTION

21 On May 11, 2017, plaintiff Karen E. filed a complaint against defendant, the
22 Commissioner of the Social Security Administration (“Commissioner”), seeking a
23 review of a denial of a period of disability, disability insurance benefits (“DIB”),
24 and supplemental security income (“SSI”). The parties have fully briefed the
25 matters in dispute, and the court deems the matter suitable for adjudication without
26 oral argument.

27 Plaintiff presents one disputed issue for decision, whether there is
28

1 substantial evidence to support the Administrative Law Judge's ("ALJ") residual
2 functional capacity ("RFC") determination. Memorandum in Support of
3 Plaintiff's Complaint ("P. Mem.") at 5-9; *see* Memorandum in Support of
4 Defendant's Answer ("D. Mem.") at 1-5.

5 Having carefully studied the parties' memoranda on the issue in dispute, the
6 Administrative Record ("AR"), and the decision of the ALJ, the court concludes
7 that, as detailed herein, the ALJ's RFC finding is not supported by substantial
8 evidence. The court therefore remands this matter to the Commissioner in
9 accordance with the principles and instructions of this Memorandum Opinion and
10 Order.

11 II.

12 **FACTUAL AND PROCEDURAL BACKGROUND**

13 Plaintiff was forty-nine years old on her alleged disability onset date and has
14 an eighth grade education. AR at 56, 279. Plaintiff has past relevant work as a
15 heating and air conditioning installer and servicer and as a tractor trailer truck
16 driver. *Id.* at 51-52.

17 On June 11, 2013, plaintiff filed applications for DIB and SSI, alleging
18 disability due to herniated discs, depression, and mood swing disorder. *Id.* at 56,
19 66. The Commissioner denied plaintiff's applications initially and upon
20 reconsideration, after which plaintiff filed a request for a hearing. *Id.* at 105-19.

21 On February 22, 2016, plaintiff, represented by counsel, appeared and
22 testified at a hearing before the ALJ. *Id.* at 38-55. The ALJ also heard testimony
23 from Sandra Fioretti, a vocational expert. *Id.* at 51-53. On March 15, 2016, the
24 ALJ denied plaintiff's claims for benefits. *Id.* at 18-33.

25 The ALJ applied the well-known five-step sequential evaluation process and
26 found, at step one, that plaintiff had not engaged in substantial gainful activity
27 since February 1, 2013, the alleged disability onset date. *Id.* at 20.

1 At step two, the ALJ found plaintiff suffered from the following severe
2 impairments: obesity; degenerative disc disease of the lumbar spine; asthma; and
3 osteoarthritis of the right hip, status post right total hip arthroplasty. *Id.*

4 At step three, the ALJ found plaintiff's impairments, whether individually
5 or in combination, did not meet or medically equal one of the listed impairments
6 set forth in 20 C.F.R. part 404, Subpart P, Appendix 1. *Id.* at 24.

7 The ALJ then assessed plaintiff's residual functional capacity,¹ and
8 determined she had the RFC to perform medium work, with the limitations that
9 she could: lift and carry fifty pounds occasionally and twenty-five pounds
10 frequently; stand and walk for six hours out of an eight-hour workday with normal
11 breaks; sit for six hours out of an eight-hour workday with normal breaks;
12 occasionally push and pull with her right lower extremity; occasionally climb
13 ramps and stairs; and occasionally balance, bend, stoop, kneel, and crouch. *Id.* at
14 25. The ALJ precluded plaintiff from: climbing ladders, ropes, or scaffolds;
15 crawling; and moderate exposure to fumes, odors, dust, gases, and poor ventilation
16 in the workplace. *Id.*

17 The ALJ found, at step four, that plaintiff is unable to perform any past
18 relevant work. *Id.* at 30.

19 At step five, the ALJ found that given plaintiff's age, education, work
20 experience, and RFC, there were jobs that existed in significant numbers in the
21 national economy that plaintiff could perform, including machine feeder, dining
22 room attendant, and hand packager. *Id.* at 31-32. Consequently, the ALJ

24 ¹ Residual functional capacity is what a claimant can do despite existing
25 exertional and nonexertional limitations. *Cooper v. Sullivan*, 880 F.2d 1152,
26 1155-56 n.5-7 (9th Cir. 1989). "Between steps three and four of the five-step
27 evaluation, the ALJ must proceed to an intermediate step in which the ALJ
28 assesses the claimant's residual functional capacity." *Massachi v. Astrue*, 486
F.3d 1149, 1151 n.2 (9th Cir. 2007).

1 concluded plaintiff did not suffer from a disability as defined by the Social
2 Security Act. *Id.* at 32-33.

3 Plaintiff filed a timely request for review of the ALJ's decision, which was
4 denied by the Appeals Council. *Id.* at 1-4. The ALJ's decision stands as the final
5 decision of the Commissioner.

6 III.

7 STANDARD OF REVIEW

8 This court is empowered to review decisions by the Commissioner to deny
9 benefits. 42 U.S.C. § 405(g). The findings and decision of the Social Security
10 Administration must be upheld if they are free of legal error and supported by
11 substantial evidence. *Mayes v. Massanari*, 276 F.3d 453, 458-59 (9th Cir. 2001)
12 (as amended). But if the court determines the ALJ's findings are based on legal
13 error or are not supported by substantial evidence in the record, the court may
14 reject the findings and set aside the decision to deny benefits. *Aukland v.*
15 *Massanari*, 257 F.3d 1033, 1035 (9th Cir. 2001); *Tonapetyan v. Halter*, 242 F.3d
16 1144, 1147 (9th Cir. 2001).

17 "Substantial evidence is more than a mere scintilla, but less than a
18 preponderance." *Aukland*, 257 F.3d at 1035. Substantial evidence is such
19 "relevant evidence which a reasonable person might accept as adequate to support
20 a conclusion." *Reddick v. Chater*, 157 F.3d 715, 720 (9th Cir. 1998); *Mayes*, 276
21 F.3d at 459. To determine whether substantial evidence supports the ALJ's
22 finding, the reviewing court must review the administrative record as a whole,
23 "weighing both the evidence that supports and the evidence that detracts from the
24 ALJ's conclusion." *Mayes*, 276 F.3d at 459. The ALJ's decision "cannot be
25 affirmed simply by isolating a specific quantum of supporting evidence."
26 *Aukland*, 257 F.3d at 1035 (quoting *Sousa v. Callahan*, 143 F.3d 1240, 1243 (9th
27 Cir. 1998)). If the evidence can reasonably support either affirming or reversing
28

1 the ALJ's decision, the reviewing court "'may not substitute its judgment for that
2 of the ALJ.'" *Id.* (quoting *Matney v. Sullivan*, 981 F.2d 1016, 1018 (9th Cir.
3 1992)).

4 IV.

5 DISCUSSION

6 Plaintiff challenges the ALJ's RFC determination, arguing it was not
7 supported by substantial evidence. P. Mem. at 5-9. In particular, plaintiff argues
8 the ALJ's reliance on State Agency physicians' opinions from August 2013 and
9 January 2014 failed to account for medical evidence from the following two years
10 for treatment plaintiff received for lower back pain and carpal tunnel syndrome.

11 RFC is what one can "still do despite [his or her] limitations." 20 C.F.R.
12 § 416.945(a)(1)-(2).² The ALJ reaches an RFC determination by reviewing and
13 considering all of the relevant evidence, including non-severe impairments. *Id.*
14 Here, the ALJ found plaintiff could perform medium work, with the additional
15 limitations that she could: stand and walk or sit for six hours out of an eight-hour
16 workday with normal breaks; occasionally push and pull with her right lower
17 extremity; occasionally climb ramps and stairs; and occasionally balance, bend,
18 stoop, kneel, and crouch; but she could not: climb ladders, ropes, or scaffolds;
19 crawl; or have moderate exposure to fumes, odors, dust, gases, and poor
20 ventilation in the workplace. AR at 25,

21 In reaching this RFC determination, the ALJ expressly gave significant
22 weight to the opinions of the State Agency physicians, Dr. K. Vu and Dr. H.M.
23 Estrin, who opined limitations for plaintiff largely consistent with the RFC found
24 by the ALJ. *Id.* at 29; *see id.* at 61-62, 84-85. Dr. Vu's opinion was given on
25 August 5, 2013, and Dr. Estrin's was given on January 15, 2014.

26
27 ² All citations to the Code of Federal Regulations refer to regulations
28 applicable to claims filed before March 27, 2017.

1 Plaintiff argues these opinions, which were rendered more than two years
2 before the ALJ's decision, are inadequate to support the RFC determination.
3 Plaintiff points out that Drs. Vu and Estrin could not have considered the bulk of
4 the medical evidence in the record, since most of it is from after January 2014.
5 Plaintiff particularly points to the substantial evidence pertaining to plaintiff's
6 lower back pain and carpal tunnel syndrome. She contends the ALJ simply relied
7 on his own interpretation of the medical records, but he was "not medically
8 qualified to translate the medical evidence" into an RFC determination, and
9 instead should have ordered a consultative examination or a medical expert to
10 review the record as a whole. P. Mem. at 7-9. The court agrees with plaintiff in
11 part.

12 It is true that an ALJ may not act as his own medical expert, since he is
13 "simply not qualified to interpret raw medical data in functional terms." *Nguyen v.*
14 *Chater*, 172 F.3d 31, 35 (1st Cir. 1999); *see Day v. Weinberger*, 522 F.2d 1154,
15 1156 (9th Cir. 1975) (hearing examiner should not go outside the record to
16 medical textbooks to make his "own exploration and assessment" as to a
17 claimant's impairments); *Rohan v. Chater*, 98 F.3d 966, 970 (7th Cir. 1996)
18 ("ALJs must not succumb to the temptation to play doctor and make their own
19 independent medical findings."); *Miller v. Astrue*, 695 F. Supp. 2d 1042, 1048
20 (C.D. Cal. 2010) (it is improper for the ALJ to act as the medical expert); *Padilla*
21 *v. Astrue*, 541 F. Supp. 2d 1102, 1106 (C.D. Cal. 2008) (ALJ is not qualified to
22 extrapolate functional limitations from raw medical data). But that is not what the
23 ALJ did here with respect to plaintiff's lower back pain.

24 Drs. Vu and Estrin considered the evidence then available to them
25 concerning plaintiff's back problems, among other impairments, and opined
26 limitations accordingly. *See* AR at 59-62, 81-85. The ALJ gave significant
27 weight to these opinions, but also reviewed in detail the subsequent medical
28

1 evidence in the record of plaintiff's treatment for low back pain, including MRI
2 findings, epidural steroid injections, pain medication, and the results of these
3 treatments. *Id.* at 26-30. The ALJ particularly noted that plaintiff reported
4 receiving good pain relief from the injections and medication, with her symptoms
5 improving as a result of this treatment. *Id.* at 29-30; *see id.* at 367-69, 877, 882.
6 Thus, although there was additional evidence not considered by the State Agency
7 physicians, the ALJ concluded it did not demonstrate a more severe lower back
8 impairment than what Drs. Vu and Estrin already considered in formulating their
9 opinions.

10 Certainly it may have been helpful for the ALJ to retain a medical expert to
11 review these records, but it was not necessarily required where, as here, the ALJ
12 reviewed the substantial medical evidence that supported his RFC determination
13 with respect to plaintiff's lower back pain. *See Tackett v. Apfel*, 180 F.3d 1094,
14 1102-03 (9th Cir. 1999) (ALJ must provide evidentiary support for his
15 interpretation of medical evidence). Ultimately, a claimant's RFC is a matter for
16 the ALJ to determine. 20 C.F.R. § 404.1546(c); *see Vertigan v. Halter*, 260 F.3d
17 1044, 1049 (9th Cir. 2001) ("It is clear that it is the responsibility of the ALJ . . . to
18 determine residual functional capacity."). Thus, the court finds no error in
19 assessing plaintiff's RFC with respect to plaintiff's low back pain.

20 Plaintiff's carpal tunnel syndrome is another matter. Although the ALJ did
21 not find carpal tunnel syndrome to be a severe impairment at step two, and
22 plaintiff does not challenge this, he was still obligated to consider plaintiff's carpal
23 tunnel syndrome in assessing plaintiff's RFC. *See SSR 96-8p* ("In assessing RFC,
24 the adjudicator must consider limitations and restrictions imposed by all of an
25 individual's impairments, even those that are not 'severe.'").

26 There was substantial evidence in the record of carpal tunnel syndrome. On
27 January 14, 2015, in response to complaints by plaintiff of numbness and tingling
28

1 in both hands, Dr. Antoine Elhajjar performed nerve conduction velocity and
2 electromyography tests on plaintiff. AR at 859. The tests revealed abnormal
3 results, with evidence of bilateral median neuropathies at the wrists, or carpal
4 tunnel syndrome. *Id.* at 860. On July 16, 2015, Dr. David Duffner observed
5 positive Phalen and Tinel's testing. *Id.* at 344. He agreed with Dr. Elhajjar's
6 carpal tunnel diagnosis, and requested authorization for bilateral carpal tunnel
7 release. *Id.* at 345.

8 Although the ALJ recognized (and rejected) plaintiff's allegations of
9 numbness and needle-like sensations in her arms, particularly after lifting
10 something like a gallon of milk (*id.* at 25-26), in assessing plaintiff's RFC the ALJ
11 did not discuss any of the medical evidence of carpal tunnel syndrome. *See id.* at
12 25-30. Certainly plaintiff's RFC does not reflect any manipulative, gripping, or
13 other limitations that might be expected for someone with carpal tunnel syndrome.
14 This failure to even consider what limitations might be warranted due to plaintiff's
15 carpal tunnel syndrome was error.

16 Moreover, even if the ALJ had discussed the evidence of carpal tunnel
17 syndrome, he would have had little basis to determine what functional limitations
18 it warranted since there was no such evidence in the record. Drs. Vu and Estrin
19 considered medical evidence concerning plaintiff's lower back pain and certain
20 other impairments, but it does not appear they reviewed any records concerning
21 carpal tunnel syndrome, and certainly they did not opine any limitations related to
22 carpal tunnel syndrome. *See* AR at 57-62, 79-86. Thus, for the ALJ to assess
23 functional limitations due to carpal tunnel syndrome on this record, he would have
24 been forced to act as his own medical expert and translate the data himself,
25 something he was not qualified to do. *See Nguyen*, 172 F.3d at 35. Under these
26 circumstance, the ALJ had a duty to develop the record further, at a minimum by
27 retaining a medical expert to evaluate the records of carpal tunnel syndrome, if not
28

1 by ordering a consultative examination. *See Mayes*, 276 F.3d at 459-60 (“An
2 ALJ’s duty to develop the record is triggered only when there is ambiguous
3 evidence or when the record is inadequate to allow for proper evaluation of the
4 evidence.”); *see also Reed v. Massanari*, 270 F.3d 838, 842 (9th Cir. 2001).

5 In sum, the record was inadequate with respect to plaintiff’s carpal tunnel
6 syndrome for the ALJ to properly determine plaintiff’s RFC. The ALJ erred in
7 failing to consider plaintiff’s carpal tunnel impairment, and erred in failing to
8 develop the record further. As such, the ALJ’s RFC determination was not
9 supported by substantial evidence.

10 V.

11 **REMAND IS APPROPRIATE**

12 The decision whether to remand for further proceedings or reverse and
13 award benefits is within the discretion of the district court. *McAllister v. Sullivan*,
14 888 F.2d 599, 603 (9th Cir. 1989). It is appropriate for the court to exercise this
15 discretion to direct an immediate award of benefits where: “(1) the record has been
16 fully developed and further administrative proceedings would serve no useful
17 purpose; (2) the ALJ has failed to provide legally sufficient reasons for rejecting
18 evidence, whether claimant testimony or medical opinions; and (3) if the
19 improperly discredited evidence were credited as true, the ALJ would be required
20 to find the claimant disabled on remand.” *Garrison v. Colvin*, 759 F.3d 995, 1020
21 (9th Cir. 2014) (setting forth three-part credit-as-true standard for remanding with
22 instructions to calculate and award benefits). But where there are outstanding
23 issues that must be resolved before a determination can be made, or it is not clear
24 from the record that the ALJ would be required to find a plaintiff disabled if all the
25 evidence were properly evaluated, remand for further proceedings is appropriate.
26 *See Benecke v. Barnhart*, 379 F.3d 587, 595-96 (9th Cir. 2004); *Harman v. Apfel*,
27 211 F.3d 1172, 1179-80 (9th Cir. 2000). In addition, the court must “remand for
28

1 further proceedings when, even though all conditions of the credit-as-true rule are
2 satisfied, an evaluation of the record as a whole creates serious doubt that a
3 claimant is, in fact, disabled.” *Garrison*, 759 F.3d at 1021.

4 Here, remand is required because the ALJ failed to consider all of plaintiff’s
5 impairments in determining her RFC, and failed to fully and fairly develop the
6 record. On remand, the ALJ shall develop the record further with respect to
7 plaintiff’s carpal tunnel syndrome, including by retaining a medical expert to
8 review the entire record or by ordering a consultative examination. The ALJ shall
9 then consider all of plaintiff’s impairments in reassessing her RFC, and proceed
10 through steps four and five to determine what work, if any, plaintiff is capable of
11 performing.

12 **VI.**

13 **CONCLUSION**

14 IT IS THEREFORE ORDERED that Judgment shall be entered
15 REVERSING the decision of the Commissioner denying benefits, and
16 REMANDING the matter to the Commissioner for further administrative action
17 consistent with this decision.

18
19 DATED: March 27, 2019



20 SHERI PYM
21 United States Magistrate Judge
22
23
24
25
26
27
28